



June 24, 2011

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2011-28 – Draft MSRB Rule G-44 (On Supervision of Municipal Advisory Activities) and Associated Amendments to Rules G-8 (On Books and Records) and G-9 (On Preservation of Records) (May 25, 2011)

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) draft Rule G-44 (On Supervision of Municipal Advisory Activities) and Associated Amendments to Rules G-8 (On Books and Records) and G-9 (On Preservation of Records) (May 25, 2011) (collectively, the “Proposal”).

I. Executive Summary

SIFMA supports the MSRB’s efforts to ensure that municipal advisors are properly supervised and that all municipal advisors adopt a supervisory structure for municipal activities not already subject to supervision under Rule G-27. As discussed in SIFMA’s comment letters submitted previously to the MSRB in response to other proposed MSRB rule changes², since the Securities and Exchange Commission (“SEC”) has not yet adopted final rules that would define

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² See Comment Letter from Leslie M. Norwood, SIFMA, to Ronald W. Smith, MSRB (April 11, 2011) at 3-5, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-14/SIFMA.ashx>; and Comment Letter from Leslie M. Norwood, SIFMA to Ronald W. Smith, MSRB (February 25, 2011) at 4-5, available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-04/SIFMA.ashx>.

the scope of activities that trigger municipal advisor registration³, and therefore the universe of potential registrants, the Proposal to establish a supervisory system for such activity is premature and may be an inefficient use of resources. Accordingly, SIFMA requests an opportunity to provide further comments once the SEC has completed its rulemaking defining the scope of activities subject to municipal advisor registration – and supervision. Once the SEC has completed its rulemaking defining the scope of personnel and activities subject to municipal advisor registration, we would expect the MSRB to propose a supervisory regime for non-dealer municipal advisors of similar robustness as the requirements of G-27 which covers dealer advisors.

II. The MSRB Should Delay its Rulemaking Until the SEC Determines the Definition of “Municipal Advisor”

The MSRB should delay its rulemaking regarding the supervision of non-dealer municipal advisors and their duties until the SEC adopts final rules defining what activities require registration as a “municipal advisor.” At this time, SIFMA is unable to fully and meaningfully comment on the Proposal without knowing to whom, and for what activities, the duties would apply. While SIFMA appreciates the MSRB’s attempt to provide supervisory guidance, it seems unproductive to propose rules that would apply to a supervisor of an as yet undefined class of persons and activities.

On its face, the Proposal appears not to impact dealer advisors, as supervisory rules for all dealer advisor activity is already covered under Rule G-27. However, many SIFMA member firms have affiliates, subsidiaries and related banks that employ personnel outside their municipal securities broker or dealer. For example, SIFMA members are concerned that investment management personnel, swap marketers, and retail banking personnel may have to register as municipal advisors, considering the broad scope of the SEC’s current proposed definition. These types of personnel are not currently covered by Rule G-27, and may be covered by proposed Rule G-44.

Therefore requiring the development and implementation of a new supervisory structure prior to the SEC completing its rulemaking defining the scope of activities triggering municipal advisor registration may result in confusion arising from multiple revisions to supervisory procedures in a short period of time. The resources needed to develop and implement supervisory procedures may be better directed at this time until the SEC has completed its rulemaking on this issue.

As we cannot analyze the full impact of proposed Rule G-44 at this time, once the SEC has issued its final rules, the MSRB should reopen the comment period on this Proposal. At that

³ See Exchange Act Release No. 63576 (Dec. 20, 2010).

time SIFMA and others may more completely consider the implications of this Proposal in light of what activities are determined to require municipal adviser registration and supervision.

III. Level Regulatory Playing Field for All Municipal Advisors

As currently proposed, Rule G-44 would cover municipal advisory activities not subject to Rule G-27 (which requires a “detailed”⁴ supervisory system) and would require all non-dealer municipal advisors to adopt a “basic”⁵ supervisory structure. SIFMA believes that all municipal advisory activity should be subject to the same level of regulation, whether it be “basic” or “detailed”. To ensure a level playing field, all market participants engaging in the same activity should be subject to the same standards.

IV. Implementation Period

Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when a final Rule G-44 is adopted, the MSRB provides for a reasonable implementation period to develop and implement supervisory policies and procedures, as well as systems and controls, which would be no less than six months, before the Proposal becomes effective.

V. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA supports the MSRB’s efforts to ensure that all municipal advisors are properly supervised and that municipal advisors adopt a supervisory structure for municipal activities not subject to supervision under Rule G-27. However, as discussed above, SIFMA members feel that the MSRB Proposal is premature until the SEC has adopted final rules defining the type of personnel deemed to be a “municipal advisor” and the scope of activities that will constitute “advice.”

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours, ,



David L. Cohen
Managing Director
Associate General Counsel

⁴ MSRB Notice 2011-28 (May 25, 2011).

⁵ MSRB Notice 2011-28 (May 25, 2011).

Mr. Ronald W. Smith
Municipal Securities Rulemaking Board
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cc:

Municipal Securities Rulemaking Board

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